

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROSE LERNER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3413

Decision No. CU - 6121

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$600.00, was presented by ROSE LERNER and is based upon the asserted loss of a stock interest in the Vicana Sugar Company. Claimant has been a national of the United States since her naturalization on December 1, 1942.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On the basis of evidence of record, the Commission finds that claimant is, and has been, the owner since prior to November 12, 1959, of 200 shares of stock of the Vicana Sugar Company. This is the first claim involving the Vicana Sugar Company and the Commission notes that several other claims have been filed by other stockholders. Thus this decision may, where applicable, serve as a precedent in the determination of those other claims.

The record discloses that Vicana Sugar Company was intervened on November 12, 1959. This corporation was organized under the laws of the Government of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore claimant is entitled to file this claim based upon her ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record contains a copy of the Annual Report to Security Holders and Financial Statements for the year 1955, stock certificates, claimant's purchase confirmation for the shares purchased in 1951 for \$3.00 each and an excerpt from the 1961 edition of Moody's Industrial Manual. The evidence of record establishes that Vicana owned a sugar mill, Central Isabel, over 26,000 acres of sugar land, 35,000 acres of virgin land and approximately 48 miles of railway with the railroad equipment necessary to transport the sugar cane to the mill. In 1955, the mill was being modernized by the addition of much new equipment with the expectation of lower

operating costs. The record further shows that the production of the sugar mill for the years 1957, 1958 and 1959 exceeded that of 1955. In 1959, the year of intervention of the company, the stock market quotations for Vicana Sugar Company stock were between \$0.125 and \$1.00.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question in all cases will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Based upon all the evidence of record, including the basis of valuation most appropriate to the property and equitable to the claimant, the Commission finds that one share of Vicana Sugar Company stock on November 12, 1959 had a value of \$1.00. Accordingly, the Commission concludes that claimant suffered a loss on November 12, 1959 in the amount of \$200.00 within the meaning of Title V of the Act.

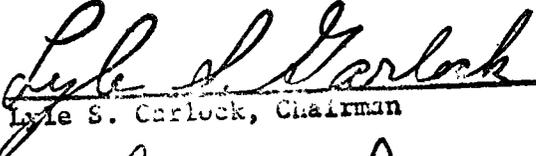
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claim, it is so ordered.

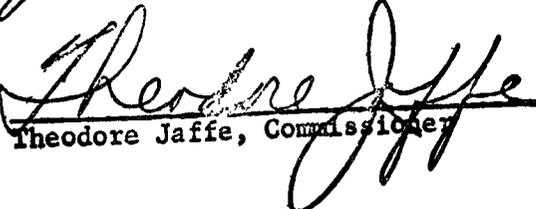
CERTIFICATION OF LOSS

The Commission certifies that ROSE LERNER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Dollars (\$200.00) with interest at 6% per annum from November 12, 1959 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAR 17 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended. (1970).)